



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201043043

Uniform Issue List: 408.03-00

AUG 04 2010

XXXXX  
XXXXX  
XXXXX

SETTLE: RA.TZ

Legend:

Taxpayer A= XXXXX

Taxpayer B= XXXXX

IRA X= XXXXX

Account Y = XXXXX

Account Z = XXXXX

Amount S= XXXXX

Date 1= XXXXX

Dear XXXXX:

This is in response to your request dated XXXXX, as supplemented by correspondence dated XXXXX, XXXXX, XXXXX, XXXXX and XXXXX, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

XXXXXX

Page 2

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age      represents that on Date 1, she received a distribution from IRA X totaling Amount S. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to her admission to the hospital for surgery relating to her colorectal cancer diagnosis during the 60-day rollover period. Taxpayer A represents that Amount S has not been used for any other purpose.

Shortly before the distribution of Amount S from IRA X, Taxpayer A was diagnosed with colorectal cancer. Doctors initially told her that she had three weeks to live. Taxpayer B, Taxpayer A's husband and caregiver, acting on Taxpayer A's behalf transferred Amount S from IRA X into Account Y.

However, as a result of his deteriorated mental state associated with the news of his wife being diagnosed with cancer and that she had only three weeks to live, and acting under his impaired mental state, Taxpayer B deposited Amount S into Account Y, instead of a qualified IRA as he intended. Because of Taxpayer A's impaired mental condition as a result of her treatment for her colorectal cancer, she has no recollection of the transfer of Amount S into Account Y.

Based upon the above facts and representations, you request that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount S.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual to whose benefit the account is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which he receives the payment or distribution; or,
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in Section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in Section 408(d)(3)(A)(i) from an IRA which was includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of Section 408(d) do not apply to any amount required to be distributed under Section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under Sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under Section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(i) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution, (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed; and, (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish the rollover within the 60-day period prescribed by Section 408(d)(3) of the Code was caused by her hospitalization and diminished mental capacity which resulted in the placement of Amount S into a non-qualified money market account instead of an IRA.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the IRS hereby waives the 60-day rollover requirement with respect to the distribution of Amount S. Taxpayer A is granted 60 days from the issuance of this ruling letter to contribute Amount S to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day rollover requirement are met with respect to such contribution, Amount S will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

XXXXXX

Page 4

201043043

Please note that, pursuant to section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of Code section 401(a)(9) minimum required distributions.

No opinion expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions regarding this ruling, please contact XXXXX, XXXXX, I.D. No. XXXXX, at XXXXX.

Sincerely yours,



Donzell H. Littlejohn, Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclosure

CC:

XXXXXX